

# **EXHIBIT D**

DECLARATION

I, Gloria Alvarez, do hereby swear, affirm and attest under the penalties of perjury as follows, based upon my personal knowledge of the matters contained herein:

1. I am over the age of 18 and competent to testify to the matters stated in this declaration. I give this declaration voluntarily. I have not been promised any benefit, coerced or threatened in any manner in exchange for the testimony in this declaration.

2. I am aware that former employees of The 40/40 Club have brought a class-action lawsuit against the Club claiming that they were not paid their full and proper wages. I am aware that I am a potential class member to the lawsuit and that the statements contained in my declaration may affect my rights in the lawsuit, should I choose to join it. However, I do not desire to become an opt-in plaintiff to any pending lawsuit against The 40/40 Club because I believe I have been properly compensated by the Club at all times.

3. I previously gave a declaration on August 20, 2007. I have been advised that I may take back my declaration without penalty of any kind. I freely elect not to rescind my declaration and reaffirm that everything stated therein is true and accurate.

4. I began working at The 40/40 Club in New York City as a Server in or around December 2005. I currently work at The 40/40 Club in Las Vegas. I began working there on December 29, 2007. The statements made herein refer specifically to my employment in New York City.

5. Throughout my employment at the Club, my paychecks and paystubs were regularly available for me to pick up in a box in the office. My paychecks are regularly void. I understand that the paycheck is void because the Club deducts the required tax withholdings for

the tips that I earn from my wages. Because I make so much money in tips, the amount of taxes that must be withheld results in no money being due to me by the Club and, thus, a void paycheck.

6. I am not aware of any employees saying that they did not receive their paychecks. If anyone had said that to me, I would have told them that the paychecks were available for pickup in the office.

7. All paychecks that I received indicated the number of hours that I had worked in the payroll period. To my knowledge, all of my paychecks accurately stated my hours worked. If I had thought there was a mistake, I would have filled out a correction payment form. These forms are available in the Club's office.

8. I received my 2005, 2006 and 2007 W-2s in a timely manner. I am not aware of any employee who has not received their W-2 in a timely manner.

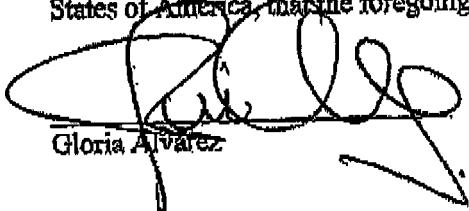
9. I received all the tips that I am owed for all the parties at which I have worked. I always kept a record of the parties that I worked and the amount of tips that the servers were due for the parties. In all cases, I either received my share of the tips in cash at the end of the evening, or in a check shortly thereafter. I do not recall any employee complaining to me that he or she had not received tips owed for a party.

10. As I stated in my previous declaration, I have no knowledge of any server working until 6:00 a.m. I have never witnessed Anita Gillette, or any other employee, working until 7:00 a.m.

11. This declaration was prepared by counsel for Twenty Ones, Inc. d/b/a The 40/40 Club based on an interview in which I voluntarily participated. I was advised that I could end the interview at any time. I have also been told by counsel for Twenty Ones Inc. that I should

only sign this declaration if everything within it is true and correct to the best of my knowledge, information and belief. I have been given a full opportunity to review carefully this declaration and freely make any corrections and additions of any kind. I verify that the information I have provided in this declaration is true and correct.

Pursuant to 28 U.S.C. § 1746, I verify under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct.



Gloria A. Alvarez

2/28/08  
Date

**DECLARATION**

I, Gloria Alvarez, do hereby swear, affirm and attest under the penalties of perjury as follows, based upon my personal knowledge of the matters contained herein:

1. I am over the age of 18 and competent to testify to the matters stated in this declaration. I give this declaration voluntarily. I have not been promised any benefit, coerced or threatened in any manner in exchange for the testimony in this declaration.

2. I am employed at The 40/40 Club, located at 6 West 25<sup>th</sup> Street, New York, New York, as a Server. I have held this position since in or around December 2005.

3. I do not consider Shawn Carter to be my employer. I have never witnessed him exercise control over any personnel decisions at The 40/40 Club. To my knowledge, Mr. Carter does not interview employees, does not hire employees, does not set policies for the payment of wages, pay rates or the method of payment, and does not sign employees' paychecks. I have never witnessed Mr. Carter supervise or discipline employees, investigate complaints, or set employment policies or procedures.

4. I also do not consider Juan Perez to be my employer. I have never witnessed him exercise control over any personnel decisions at The 40/40 Club. To my knowledge, Mr. Perez does not interview employees, does not hire employees, does not set policies for the payment of wages, pay rates or the method of payment, and does not sign employees' paychecks. I have never witnessed Mr. Perez supervise or discipline employees, investigate complaints, or set employment policies or procedures.

5. At all times throughout my employment, I have been required to clock in and clock out to provide The 40/40 Club with an accurate record of my time worked. When I arrive for work at the Club, the first thing I do is clock-in by logging into the computer. I clock-out by logging out of the computer before I leave each night.

6. I typically work four days per week and eight to ten hours per workday.

7. I am not aware of any customer who has walked out of the Club without paying the bill. For each customer, we are supposed to secure payment by taking cash or a credit card and identification. I have no knowledge of The 40/40 Club deducting from my wages or the wages of any other employee the amount of a bill because a customer walked out without paying.

8. The 40/40 Club has never deducted an amount from my wages due to breakage, spills, returns, wrong orders or anything similar. Although these things have occurred to me, I have never had to pay an amount to the Club. I have no knowledge of any such deductions being made from any other employee's wages.

9. I believe The 40/40 Club has paid me all wages to which I am entitled. I do not believe that I have been denied any minimum, overtime or other wages.

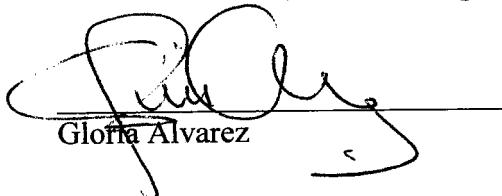
10. The 40/40 Club closes by 4:00 a.m. and sometimes earlier on the weekdays. I am not aware of any server ever working until 6:00 a.m. On weekends, servers generally leave within an hour after close. On weekdays, servers generally leave within thirty minutes after close.

11. The 40/40 Club has never retained any portion of my tips.

12. Servers at the 40/40 Club maintain the amounts paid by customers, including tips we receive, until the end of the night. A 20% tip is automatically added to each bill by the computer. At the end of the night, we run a cash-out report and we pay the Club the amount of the bills less the 20% tips. Usually we receive more cash than credit card payments. However, on the occasions where the amount of cash we receive does not cover our credit card tips, we are paid the balance by the Club on the spot. Therefore, the Club never takes possession of our tips. The 40/40 Club does not have a tip pooling arrangement, but we do give a percentage of our tips to the bussers, runners and bartenders who help us serve our tables.

13. This declaration was prepared by counsel for Twenty Ones, Inc. d/b/a The 40/40 Club based on an interview in which I voluntarily participated. I was advised that I could end the interview at any time. I have also been told by counsel for Twenty Ones Inc. that I should only sign this declaration if everything within it is true and correct to the best of my knowledge, information and belief. I have been given a full opportunity to review carefully this declaration I have been given a full opportunity to review carefully this declaration and freely make any corrections and additions of any kind. I verify that the information I have provided in this declaration is true and correct.

Pursuant to 28 U.S.C. § 1746, I verify under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct.



Gloria Alvarez

8/20/07  
Date